



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

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October 19, 2004

Mr. James A. Guest
President, CEO
Consumers Union
101 Truman Avenue
Yonkers, NY 10703-1057

Dear Mr. Guest:

I am writing to express my concern regarding certain false or misleading statements in the article "Hazard in aisle 5," which appears in the November 2004 issue of *Consumer Reports*. I believe that these statements, if left uncorrected, will seriously mislead your readers about the relative safety of the consumer marketplace today and the effectiveness of the U.S. Consumer Product Safety Commission (CPSC) in policing that market.

In reviewing your article, I focused primarily on your assertions concerning unsafe toys and other products on the market. In particular, you stated that after shopping this summer, *Consumer Reports* investigators found that "Forty eight toys, or roughly one in three toys [you] bought, violated mandatory or voluntary safety standards." (p.13) You added that you had "forwarded [your] findings to the CPSC and will report on any developments."

Your "findings" were received shortly before publication of the November 2004 issue. They consisted of three spreadsheets and a compact disc (CD). The spreadsheets provide some basic information about the products you judged violative of a standard; nearly all the claimed violations involved the CPSC "small parts" regulations. The CD contained photographs of most of the products listed in the spreadsheets. In some cases, the photographs did not show the product clearly enough for us to reach any conclusion about compliance. Accordingly, we asked you to give CPSC field investigators direct access to the samples you collected. You agreed to allow this access on October 13, 2004, approximately eight days after publication of the November issue.

Based on the information obtained from you, staff experts have concluded that at least thirty-four of the toys on your list do not violate any CPSC safety standard. Another two of the listed products were already recalled by CPSC some months before your publication. For the remaining products, there still is not enough information to make a definitive determination as to whether they violate any CPSC safety standard. Staff is attempting to collect additional samples of these products in order to make a final determination.

It is remarkable that you could be wrong in such a high percentage of cases. I offer the following as a brief explanation for some of our different conclusions:

1. Grooming products, such as barrettes and hair clips, are expressly exempt from the small parts regulation. 16 C.F.R. § 1501.3(e).
2. Toys that are age-graded for children over age five (for example, tiddly winks) are not subject to the small parts choking hazard warning regulation and therefore do not require a warning label. 16 C.F.R. § 1500.19(b).
3. Writing materials, such as pens, are expressly excluded from the small parts regulation. 16 C.F.R. § 1501.3(b), (c).
4. Paint sets are expressly excluded from the small parts regulations. 16 C.F.R. § 1501.3(h).
5. Cosmetic items, such as lip balm and nail polish, fall under the primary jurisdiction of the Food and Drug Administration. CPSC does not regulate these items. *See* 15 U.S.C. § 2052(a)(1)(H), 15 U.S.C. § 1261(f)(2). They would fall outside the coverage of the small parts regulations in any case.
6. Fabric parts are excluded from the small parts regulation. 16 C.F.R. § 1501.4(b)(2).
7. The choking hazard warning regulation does not require “use and abuse” testing; warning labels are required only for toys and games that contain small parts “as received” or parts that are intended to be removed by a child. 16 C.F.R. § 1500.19(a)(5).
8. Modeling clay and similar products are expressly exempt from the small parts regulations. 16 C.F.R. § 1501.3(g).
9. Some items on the list are not toys or games, and therefore are not subject to the small parts choking hazard warning regulation.

I should point out that some of the items on your list actually have small parts warnings, even where they were not legally required.

My other major objection to your article is the misleading impression created by your use of outdated statistics. You claim that the number of CPSC recalls is “steeply declining,” citing a comparison between fiscal 2001 and 2003. (p. 12) Yet in fiscal year 2004, which was completed before your article went to press, the number of recalls (356) was higher than the number in 2001. In FY 2004, CPSC recalled more consumer products -- over 200 million -- than in any prior year.

Your article also ignored other statistics that would have contradicted your storyline painting CPSC as a “weakened watchdog.” For example, in FY 2004, CPSC imposed \$4.2 million in civil penalties. That is the third highest annual civil penalty amount in the agency’s 30-year history. During the last three years, the CPSC has collected more civil penalties (\$10.6 million) than it did during the entire decade of the 1990’s (\$8.5 million).

FY 2004 was also the all-time record year for reports to the CPSC under section 15 of the Consumer Product Safety Act. This shows that companies within our jurisdiction are taking their responsibilities (and CPSC) more seriously than ever before.

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I appreciate the efforts of Consumers Union and other consumer organizations to promote consumer awareness of important safety issues and to identify safety hazards in the marketplace. Conversely, I believe that you disserve the public when you portray the marketplace as more dangerous than it is or CPSC as less effective than it really is. I urge you to correct the record on these important subjects. In addition, if you locate dangerous products in the future, I urge you to bring them to our attention right away and not to wait for an arbitrary publication date.

Sincerely,

Patricia M. Semple